

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

VOLUNTEERS OF AMERICA OF GREATER
NEW YORK, INC.

Employer ¹

and

LOCAL 30, INTERNATIONAL UNION OF
OPERATING ENGINEERS, AFL-CIO

Petitioner

Case No. 34-RC-1827

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. The Petitioner seeks to represent a unit of boiler room employees employed by the Employer at the homeless shelter it operates in Chester, New York. The Employer contends that the petition is "premature" because its operation of the shelter "is in its formative stages" during which "it is still trying to hire staff."

¹

The Employer's name appears as amended at the hearing.

The record establishes that the City of New York maintains a homeless shelter on approximately 16 acres in Chester, New York. Prior to November 1, 1999, the City had operated the shelter. Since November 1, 1999, the Employer has operated the shelter. Except for what the record describes as the “trades people,” after taking over the shelter’s operation, the Employer retained all of the former employees for 30 days as a “transition team.” The trades people, including the former boiler room employees, remained employed until April 17, 2000, at which time the Employer completed the transition and began using newly hired employees. Among those newly hired trades people are the 8 full-time and regular part time boiler room employees who constitute the petitioned-for unit.

At the time of the hearing, including supervisors and managers, the Employer employed a total of approximately 145 individuals at the shelter. Although the Employer’s Division Director testified that the Employer’s “short term ultimate goal” is to increase the shelter’s overall total staff to 170 individuals, there was no evidence as to when this was to occur or the job classifications to be added. More significantly, and contrary to the Employer’s contention, there is no evidence that the Employer intends to expand the size of the petitioned-for unit.²

Based upon the above and the record as a whole, I find that the employee complement in the unit as of the close of the hearing was substantial and representative of the ultimate employee complement to warrant directing an immediate election. See e.g. *Wittman Steel Mills, Inc.*, 253 NLRB 320 (1980); *General Cable Corporation*, 173 NLRB 251 (1969). Accordingly, I find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) of the Act.

5. As previously indicated, the Petitioner seeks to represent a unit limited to the 8 full-time and regular part-time boiler room employees employed by the Employer at the Chester, New York facilities. The Employer does not dispute the appropriateness

² In this regard, in her closing argument Counsel for the Employer merely stated that the Employer was “hoping to bring in [to the boiler room] some more full timers so that we can phase out part time people who aren’t there on a day to day basis...”

of a unit limited to boiler room employees.³ However, contrary to the Petitioner, the Employer would exclude full time stationary engineer William Pawlowski as a statutory supervisor, and part time stationary engineer Timothy Van Buren as having a “conflict of interest” due to his employment as an inspector of high pressure boilers for the State of New York.

The record reveals that the boiler room’s operation is part of the Chester facilities’ Maintenance and Environmental Department, which is under the general overall supervision of Associate Director of Operations Brian Bardell. Direct responsibility for supervising the Maintenance and Environmental Department, and its 22 employees, is vested in Environmental Manager Eric Hammond and his Assistant, George Bory.

The record establishes that William Pawlowski was hired on February 2, 2000. Although he was offered a position as an Assistant Manager at an annual salary of \$64,000, he declined, in part because of the level of responsibility. Instead, he was offered and accepted a position as a full time Maintenance Level IV Stationary Engineer, working Monday through Friday, from 8:00 a.m. to 4:00 p.m., at an annual salary of \$56,000 and with eligibility for overtime. His basic responsibilities consist of “hands-on” work with tools operating and maintaining the facilities’ high-pressure boilers, and providing on-the-job training for other less experienced unit employees. In addition, Pawlowski is authorized to call in outside contractors, and requisition supplies. However, it is clear that the former is limited to emergency situations,⁴ while the latter requires prior approval by Hammond and Bardell.

Pawlowski and other petitioned-for employees work in the boiler room, which is located in the basement of the main building, and in an office, which is located in a different building. Although Hammond and Bory work in a separate office in a

³ At the hearing the Petitioner described the unit as encompassing “All full-time and regular part-time skilled trade boiler room employees...” The Employer has objected to the use of the term “skilled trade.” The record contains little evidence as to the skills required to work in the boiler room. In view thereof, and as there is otherwise no dispute as to the appropriateness a unit limited to boiler room employees, I shall omit any reference to the term “skilled trade” in describing the unit.

⁴ In this regard, Counsel for the Petitioner noted on the record, without objection, that the boilers in question are “inherently dangerous” and can cause “severe” damage.

warehouse, which is situated approximately ¼ mile away, both are in the boiler room on a daily basis.

It is undisputed that Pawlowski does not hire or interview employees, evaluate their job performance, issue discipline, grant or recommend wage increases, schedule work, authorize overtime or resolve grievances. Although his job description generally states that he is responsible for the “supervision of maintenance workers,” this appears to be limited to assigning work to two or three other significantly less skilled and less experienced boiler room employees who may be scheduled to work with him. In this regard, the record establishes that no one at the shelter has greater skill or ability than Pawlowski. More specifically, he has a Bachelor of Science degree; 34 years experience as an engineer; and a Marine Engineer’s license in steam and diesel, a New York City Stationary Engineer’s high pressure steam license, and a New York City Refrigeration Engineer’s license. Indeed, Bardell testified that the Employer relies upon Pawlowski for his “technical knowledge in the operating systems of [its] older high pressure boilers.” The record contains no other evidence that Pawlowski possesses or exercises any supervisory authority.⁵

Based upon the above and the record as a whole, I find that Pawlowski’s responsibility to train and assign work to a few employees is essentially the function of a more experienced employee in relation to less experienced employees, and that he is not a supervisor within the meaning of the Act. *Brown & Root, Inc.*, 314 NLRB 19, 22 (1994); *Sanborn Telephone Company, Inc.*, 140 NLRB 512, 515 (1963). I shall, therefore, include him in the unit.

The record reveals that during his job interview for a part time position in the boiler room, Timothy Van Buren informed Bardell that he was employed full time by the State of New York as an inspector of high pressure boilers. Van Buren also remarked that he was familiar with the boilers at the shelter because he had previously inspected them. Bardell testified that he “wasn’t overly concerned” about this, and that he asked Van Buren if working for the Employer would result in a “conflict of interest” with his full

⁵ Pawlowski’s job description states that, in the absence of the Assistant Environmental Manager, the incumbent “will have overall responsibility of facilities maintenance.” However, the record does not describe what this responsibility entails.

time job. Van Buren responded that if the State had a problem the State could assign another inspector to inspect the shelter's boilers.

State inspection of the shelter's boilers is overdue. There is evidence in the record that Van Buren is going to arrange for another State inspector to inspect the shelter's boilers.

The Employer maintains, without proffering any further evidence or explanation, that placing Van Buren in the unit would create "conflicting employment responsibilities" because "the very authority vested in Mr. Van Buren as a government inspector ... makes his inclusion an untenable burden on the Employer's ability to have a 'level playing' field in the collective bargaining relationship." As previously indicated, the Petitioner takes the position that Van Buren should be included in the unit.⁶

In the absence of any evidence that Van Buren's State inspection responsibilities would require him to report on other employees, or would otherwise compromise either party's ability to bargain collectively, the cases cited by the Employer are clearly inapposite and distinguishable. To the contrary, it would appear that Van Buren's State inspection responsibilities substantially parallels the interests of the Employer and the employees in maintaining a safe living and working environment. See, *University of Tulsa*, 304 NLRB 773 (1991). In this regard, I note that the best judge of whether there is a conflict of interest is the State of New York, "which, if it perceives any danger, is free to prohibit or limit [Van Buren's] outside employment" or to reassign him. *Id.*, at 774. I shall, therefore, include Van Buren in the unit.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time boiler room employees employed by the Employer at Chester, New York; but excluding managers, office clerical employees and guards professional employees and supervisors as defined in the Act.

⁶ As the Employer correctly notes in its post-hearing brief, at the hearing the Petitioner had indicated that it was not seeking to represent "any State inspector assigned to inspect the boilers" at the shelter. It is clear however, from the record as a whole and the Petitioner's post-hearing brief, that the Petitioner was referring to individuals other than Van Buren.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by Local 30, International Union of Operating Engineers, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before July 3, 2000. No extension of time to file these lists shall be granted except in extraordinary

circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 10, 2000.

Dated at Hartford, Connecticut this 26th day of June, 2000.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
Region 34
National Labor Relations Board

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